



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 22, 1995

Mr. Michael V. Abcarian  
Arter, Hadden, Johnson & Bromberg  
1717 Main Street, Suite 4100  
Dallas, Texas 75201-4605

OR95-809

Dear Mr. Abcarian:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 33656.

The Arlington Youth Services ("AYS") received a request for:

1. Minutes of all meetings of the board of directors from June, 1991 to April 18, 1995, inclusive.
2. Minutes of all personnel and finance and executive committees [sic] meetings of the board of directors for the time period indicated above.
3. The complete tape recording and minutes of the evening meeting of March 30, 1995.

You claim that a portion of the requested information is excepted from disclosure under section 552.101 of the Government Code because it is protected by the attorney-client privilege.

You state that you received a facsimile from the requestor on April 25, 1995, in which the requestor sought records under the Open Records Act. The requestor's attorney sent a second letter on May 3, 1995, inquiring as to the status of AYS's response to the April 25 request. AYS did not request a decision from this office until May 12, 1995. You claim that the April 25, 1995 request for information is invalid for two reasons: (1) it was not sent to AYS's public records officer, and (2) it was not signed as required by section 552.229(a) of the Government Code. We disagree with both arguments.

The request for public information under the Open Records Act is not required to be addressed to the officer of public records. The Open Records Act does not require "that a requestor use any 'magic' words such as naming the chief administrative officer so long as the request reasonably can be identified as a request for public records." Open Records Decision No. 497 (1988) at 3; *see* Open Records Decision No. 44 (1974) ("If a written communication to an agency can be reasonably judged a request for public information, it is a request with the terms of the Open Records Act"). This office has recognized that chief administrative officers would not be personally handling all requests for records and would delegate that responsibility to agents. Open Records Decision No. 497 (1988); *see* Open Records Decision Nos. 576 (1990), 44 (1974). An attorney is an agent for the client he represents. Therefore, we conclude that AYS received the request for records on April 25, 1995, the date on which you, AYS's attorney, received the request.

You also claim that because the April 25, 1995, request is for personnel records and the request was not signed as required by section 552.229(a), the request was not sufficient. The request was not for "personnel" records or for information to which the requestor would have a special right of access, but for minutes and tape recordings of AYS board meetings. Therefore, section 552.229(a) is not applicable to the requested records. The city thus failed to request a decision within the ten days required by the Government Code.

Sections 552.301 and 552.302 of the Government Code require a governmental body to release requested information or to request a decision from the attorney general within ten days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within ten days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.—Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.—Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

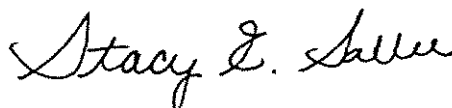
You have claimed that section 552.101 of the Government Code excepts a portion of the requested information from disclosure because it is protected by the attorney-client privilege. We note that the attorney-client privilege is properly invoked under section 552.107(1) and not section 552.101. This office has previously held that the attorney-client privilege is an insufficient basis to overcome the presumption of openness arising from the failure to meet the ten-day deadline. Open Records Decision No. 630 (1994). Therefore, AYS may not withhold the information submitted to this office for review from required public disclosure under the attorney-client privilege.

We are unable to determine from the information provided whether the March 30, 1995, meeting, which you refer to as a "special" meeting, was a closed executive session under the Open Meetings Act. If this meeting was a closed executive session under

the Open Meetings Act, the tape recording and a certified agenda of that session are confidential by statute and must not be disclosed. Gov't Code § 551.104(c). If the March 30 meeting was not a closed executive session, the submitted document and tape recording may not be withheld.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee  
Assistant Attorney General  
Open Government Section

SES/RHS/rho

Ref.: ID# 33656

Enclosures: Submitted document and tape

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